

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Grand & Ashland Tap, Inc.)
Betty Stokes, President)
Applicant (Outdoor Patio))
for the premises located at) Case No. 08 LA 11
1600 West Grand Avenue)
)
)
v.)
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Norma I. Reyes, Commissioner)
)

ORDER

OPINION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER SCHNORF

Grand & Ashland Tap, Inc. applied for an Outdoor Patio license. On November 27, 2007, the application was denied by Scott V. Bruner, then the Director of the Local Liquor Control Commission. The denial was based on his finding that the granting of this license would cause a deleterious impact on the health, safety and welfare of the surrounding community and would cause a law enforcement problem for the district police. With respect to the issue of deleterious impact, the denial specifically referred to a high level of existing crime and nuisance problems near the applicant's location including loud late night disturbances, public intoxication, and public fighting. The denial also referred that the applicant has not been responsive to the concerns of the community. The denial letter advised the applicant it had twenty (20) days to file a plan of operation that would provide reasonable assurance that the issuance of the license would not have a deleterious impact on the community.

The applicant filed a plan of operation in a timely manner. After a review of the plan, on

February 4, 2008, the Acting Director of the Local Liquor Control Commission disapproved the proposed plan of operation based on her determination that the plan did not provide reasonable assurance that the issuance of the outdoor patio license will not have a deleterious impact on the community. Specifically, the plan was found to be deficient since it did not address any specific deleterious impact concerns and it failed to show any effort by the applicant to meet with and discuss the concerns of the residents.

A timely notice of appeal was filed with this Commission and the matter proceeded to a de novo hearing before the Commission.

The initial issue to be decided is whether the evidence presented at the hearing established by a preponderance of the evidence that the issuance of this outdoor patio license would have a deleterious impact on the health, safety and welfare of the community. Deleterious impact as defined by the Municipal Code means “an adverse impact on the value of any property, an increased risk of violations of the law, a risk of a substantial increase in noise, litter, or vehicular congestion.” Should the City establish that the issuance of this license would cause a deleterious impact the second issue to be decided is whether the plan of operation adequately addressed the deleterious impact. It should be noted that the law enforcement objection raised as another basis to deny this license was withdrawn by the City prior to the hearing.

Betty Stokes has operated this establishment since 1986. It currently has a Public Place

of Amusement license, a Retail Food and Late Hour license. In 2008, it applied and received a permit to serve food and liquor on the public way adjacent to the premises. This is referred to as a Sidewalk Café permit. The past disciplinary history includes:

<u>Violation Date</u>	<u>Charge</u>	<u>Disposition</u>
1-14-99	Sale of Alcohol to Minor	14 day suspension
5-19-89	Gambling	5 day suspension
3-8-99	Failure to notify the police Operating without a PPA license	15 day suspension
6-9-91	Simple Battery	Violation Warning
8-27-97	Operating with expired automatic amusement devices; No tax emblem on automatic amusement devices	Voluntary Fine - \$1,500
3-10-95	Sale of Alcohol to Minor	Voluntary Fine - \$800

Counsel for licensee made mention in his opening statement and at other times in the hearing that a plan of operation had been submitted by the applicant and approved by the City. For purposes of clarity that issue will be discussed at this point in this decision. There are two separate plans in evidence which deal with two separate sections of the Municipal Code. Section 4-60-130 (f)(1) of the Municipal Code requires that any licensee with a late hour privilege prior to the effective date of the amendatory ordinance must submit to the Department of Business Affairs and Licensing an exterior safety plan meeting the requirements of this subsection no later than January 1, 2008. Among the matters required to be presented by this exterior safety plan were excessive noise caused by patrons leaving or entering the premises; loitering or littering by

such patrons; fighting or other criminal activity by such patrons; and the congregation of departing patrons in such numbers so as to unreasonably impede traffic flow. City's Exhibit #8 is the Late Hour Exterior Safety Plan presented by the licensee to the Department of Business Affairs & Licensing (DBA) and approved by that department on May 19, 2008. City's Exhibit #7 is a letter from DBA approving that plan. That plan and approval of that plan is not relevant or determinative with respect to the issue of deleterious impact. City's Exhibit #6, in evidence, is the Plan of Operation submitted to DBA in response to the denial of this outdoor patio license on the basis of deleterious impact. This plan was not approved by DBA for the reasons set out in the February 4, 2008, letter to Ms. Stokes from Acting Director Mary Lou Eisenhauer.

Joy Adelizzi testified she is a Deputy Director for the Department of Business Affairs & Licensing. The application for an outdoor patio license at 1600 W. Grand Avenue was denied on November 27, 2007, by then Director Scott Bruner on the basis of deleterious impact. A Plan of Operation, City's Exhibit #6, in evidence, was submitted, reviewed and denied. Ms. Adelizzi was part of the reviewing process for this plan of operation. It was denied since it did not address the concerns of the residents. The letters of support came from business owners and not community residents. The plan did not delve into the issues set out in the original denial and was a skeleton of the late hour exterior safety plan. While that plan was approved, that plan would not address the outdoor patio license which would allow the licensee to serve and allow patrons to consume alcohol on that patio.

The City presented several primary witnesses in opposition to the issuance of this license

including Cynthia Soto who testified individually and in her position as the area's State Representative. The bulk of the complaints from these witnesses deal with Betty's Blue Star Lounge present operation with a late hour license. They detail problems of public urination, vandalism, litter, and increased noise in the community from patrons leaving Betty's early in the morning. They also complained of parking problems due to people coming from outside of the neighborhood to go to Betty's since it is the only late hour establishment in the area. They all feel that the issuance of the patio license would lessen property values. Some of the witnesses gave their opinion that allowing this patio license would move patrons outside and that would add a new cause of noise from a new location.

The witnesses supporting the issuance of this license feel that allowing this patio license would not cause a substantial increase in noise, litter or traffic. Betty Stokes testified that the patio would close at 10:30 p.m. on weekdays and at 11:30 p.m on weekends to address the concern of noise. She also testified Betty's Blue Star Lounge has valet parking.

If one takes the evidence from the opponents of this license as true, it would be clear that the activities of the patrons of Betty's Blue Star Lounge are causing a deleterious impact on the community. As such the operation of Betty's with a late hour license is causing a deleterious impact on the community. If the City feels this is occurring, there are other approaches it can take to remedy the deleterious impact from the late hour license.

The issue in this case is not whether Betty's Blue Star Lounge is presently causing a

deleterious impact on the community but whether the issuance of a patio license would cause a risk of a substantial increase in noise, litter and vehicular congestion. In order to make that determination evidence of how the bar has operated is relevant in terms of a history and pattern of operation of the bar. The past discipline is not the only history of operation of this business in the record. Pursuant to the provisions Chapter 10-28-800 through 885, Betty's applied for and received a permit for a sidewalk café for the March 1 through December 1, 2008, time period. That sidewalk café permit allowed Betty's to sell food and alcohol on the public right of way next to its building. This café was allowed to operate until midnight. There was no evidence that the operation of this sidewalk café last year caused any substantial increase in noise, litter or vehicular congestion. There was no evidence that Betty's in operating this sidewalk café caused any of the problems cited by the opponents of this license. There is no evidence that anyone made any complaints about the operation of the sidewalk café. While an outdoor patio has less restrictions than a sidewalk café with respect to design and use, the past history of the sidewalk café is relevant to this decision.

The burden of proof is on the City to establish at the de novo hearing the propriety of the decision to deny this patio license at this address because its issuance would cause a deleterious impact in the health and welfare of the community. As mentioned earlier there was evidence that if true established that the operation of Betty's with respect to its late hour license was causing a deleterious impact on the community. That evidence does not automatically prove the issue in this case. The City did not meet its burden of proof that the issuance of this patio license at this location would cause a deleterious impact.

The decision of the Local Liquor Control Commission is reversed.

COMMISSIONER KOPPEL'S CONCURRING OPINION

The applicant has applied for an Outdoor Patio license which has been denied because it would cause a deleterious impact upon the community. It should be noted that a permit to operate a sidewalk café for this location has been approved.

This applicant is a competent and responsible business woman who has been in business for many years. The outdoor patio is enclosed by a fence. It should be noted that it has a security staff of six managed by a retired police officer. The entire staff has had Bassett training and is well aware of the importance in over serving alcohol. It should be further noted that the Alderman approved this application. Some community residents complained that it would cause a deleterious impact upon the community. The place is properly zoned.

To say that the issuance of an outdoor patio license could cause a bad situation is not enough to say it's a deleterious impact upon the community. If problems do exist it is the responsibility of law enforcement agencies to monitor and control this problem. The applicant is credible and responsible. The Local Liquor Control Commission's denial of this license is a back doorway of revoking. There are due process procedures to close a bad place and there are methods to prevent openings of liquor establishment (local options and moratoriums).

To deny this license on the testimony that something might go awry is not enough. The license

should be granted.

THEREFORE, IT IS HEREBY ORDERED That the said order or action of the Local

Liquor Control Commissioner of the City of Chicago be and the same hereby is REVERSED.

Pursuant to Section 154 of the Illinois Liquor Control Act, a Petition for Rehearing may be filed with this Commission within TWENTY (20) days after service of this order. The date of the mailing of this order is deemed to be the date of service. If any party wishes to pursue an administrative review action in the Circuit Court, the Petition for Rehearing must be filed with this Commission within TWENTY (20) days after service of this order as such petition is a jurisdictional prerequisite to the administrative review.

Dated: March 20, 2009

Dennis M. Fleming
Chairman

Irving J. Koppel
Member

Stephen B. Schnorf
Member